

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

SERVED MAR 5 1996

Issued by the Department of Transportation
on the 7th day of February, 1996

Application of

AER TURAS TEORANTA

for a foreign air carrier permit under
49 U.S.C. section 41301

Docket 45142

ORDER RENEWING FOREIGN AIR CARRIER PERMIT

Summary

In this order we are renewing the foreign air carrier permit of Aer Turas Teoranta, a foreign air carrier of Ireland, under section 41301 of Title 49 of the U.S. Code, to perform charter all-cargo foreign air transportation between Ireland and the United States; and other all-cargo charters subject to Part 212 of the Department's rules.

Application

By application filed April 29, 1993, Aer Turas seeks to renew its foreign air carrier permit, issued by Order 88-5-34, to engage in charter foreign air transportation of property and mail between Ireland and the United States; and to perform other all-cargo charters in accordance with the Department's rules governing charter operations.¹

In support of its renewal application, Aer Turas states that: (1) it remains qualified to perform the proposed services; (2) the requested authority is provided for in a bilateral aviation agreement between the United States and Ireland; (3) it continues to hold an effective homeland license from the Government of Ireland to perform the proposed services; and (4) it remains substantially owned and effectively controlled by citizens of Ireland. Aer Turas further states that Ireland is a contracting state to the Convention on International Civil Aviation and its maintenance program complies with ICAO Annexes 1, 6 (Part 1) and 7.

No answers were filed in response to Aer Turas' permit renewal application.

¹ Aer Turas' existing foreign air carrier permit was issued by Order 88-5-34, effective May 11, 1988, for a period of five years.

Decision

We have reviewed the record and have decided to renew Aer Turas' foreign air carrier permit using the simplified Subpart Q procedures.² The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.³ The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority.

Simplified procedures are appropriate in this case, because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Aer Turas is qualified to conduct the proposed operations.

Public Interest Considerations

Since we last renewed Aer Turas' foreign air carrier permit in 1988, the United States and Ireland concluded an arrangement on charter services between the two countries. The charter authority Aer Turas seeks to renew is now encompassed in the bilateral aviation agreement between the United States and Ireland.⁴

Operational and Financial Fitness

We find that Aer Turas is operationally and financially fit to conduct the operations at issue here. Aer Turas has been conducting all-cargo charter operations to and from the United States since 1982, has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five years. Aer Turas holds effective authority from its homeland to conduct the proposed operations. The FAA's Air Transportation Division (AFS-200) has advised us that it knows of no reason why Aer Turas' request to renew its foreign air carrier permit should not be approved.⁵ Finally, Aer Turas has provided financial information which indicates that it can conduct the proposed services without jeopardizing shipper funds.

² 14 CFR 302.1701 *et seq.* Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

³ 58 FR 28087, May 12, 1993.

⁴ See the Annex to the February 3, 1945 Air Transport Services Agreement between the United States and Ireland, as amended. Under the Department's rules governing charter operations (14 CFR Part 212), unless otherwise ordered by the Department, any foreign air carrier whose permit authorizes charters may perform Third and Fourth Freedom charters without limitation or specific prior approval, and may perform Fifth Freedom charters upon obtaining a specific statement of authorization from the Department.

⁵ A copy of the FAA's November 2, 1995, memorandum has been placed in Docket 45142.

Ownership and Control

We find that Aer Turas is substantially owned and effectively controlled by citizens of Ireland. Since we last renewed Aer Turas' foreign air carrier permit there have been a number of changes in its ownership. Prior to 1994, 80% of Aer Turas' stock was owned by Aer Lingus plc, Ireland's national airline. On August 26, 1994, Aer Lingus' shares were acquired by Clouna Limited which is wholly owned by two citizens of Ireland, P.J. Cousins and S.J. O'Connell. Messrs. Cousins and O'Connell are citizens of Ireland and officers of Aer Turas.

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue Aer Turas Teoranta a foreign air carrier permit in the form attached;
2. Aer Turas Teoranta is qualified to perform the air services described in the attached permit;
3. Aer Turas Teoranta is fit, willing and able properly to perform the foreign air transportation described in the attached permit, and to conform to the provisions of the Act and to the Department's rules, regulations, and requirements;
4. The public interest requires that the exercise of the privileges granted by the attached permit be subject to the terms, conditions and limitations contained in and attached to this permit, and to such others required by the public interest as we may prescribe;
5. The issuance of this foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a)(1) of our Regulations;⁶ and
6. The public interest does not require an oral evidentiary hearing on the application.

ACCORDINGLY,

1. We issue, in the form attached, a foreign air carrier permit to Aer Turas Teoranta authorizing it to engage in charter foreign air transportation of property and mail between any point or points in Ireland and any point or points in the United States; and to perform other all-cargo charters in accordance with 14 CFR Part 212 of the Department's regulations;
2. The exercise of the privileges granted above are subject to Aer Turas Teoranta's compliance with the conditions listed in Attachment A;

⁶ This finding is based on the fact that the grant of this permit will not result in a near-term increase in annual fuel consumption by the applicant in excess of 10 million gallons.

3. To the extent not granted, we deny all requests for relief in Docket 45142;
4. Unless disapproved by the President of the United States under section 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁷ and
5. We will serve a copy of this order on Aer Turas Teoranta; the Ambassador of Ireland in the United States; the Department of State and the Federal Aviation Administration (New York-IFO).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at

⁷ This order was submitted for section 41307 review on

<http://www.dot.gov/dotinfo/general/orders/aviation.html>

SUMMARY

FOREIGN AIR CARRIER PERMIT APPLICATION Docket 45142

Aer Turas Teoranta

Flag: Republic of Ireland

Federal Register Notice: 58 FR 28087, May 12, 1993

Filing Date: April 29, 1993

Authority Sought: Renew foreign air carrier permit, issued by Order 88-5-34, to engage in charter foreign air transportation of property and mail between Ireland and the United States; and to conduct other all-cargo charters subject to Part 212 of the Department's regulations.

Pleadings: No answers were filed in response to Aer Turas' application.

Public Interest: Aviation relations between the United States and Ireland are governed by the U.S.-Ireland Air Transport Agreement (signed February 3, 1945), as amended. On September 2, 1990, the United States and Ireland exchanged notes bringing into effect a new Annex to the Agreement which provides for, among other things, the charter services at issue here. Previously, charter services between the United States and Ireland were based on comity and reciprocity. Reciprocity on the part of Ireland is adequate to allow Aer Turas to operate Fifth Freedom charters subject to the prior approval requirements of 14 CFR Part 212.

Fitness: Aer Turas was incorporated on September 6, 1962, and is based in Dublin. Aer Turas has provided all-cargo charter service to and from the United States on a continuous basis since 1982, the year we issued Aer Turas its initial foreign air carrier permit (see, Order 82-9-64). Aer Turas' foreign air carrier permit was most recently renewed in 1988, for a period of five years (see, Order 88-5-34). Aer Turas holds appropriate licenses from its government and has had no safety violations or fatal accidents in the last five years. Aer Turas has experienced management and appears financially sound:

Financial Indicators

(\$ millions) As of March 31

	<u>1995</u>	<u>1994</u>
Total Assets	25.0	30.6
Total Liabilities	20.1	31.9
Owner's Equity	4.9	(0.3)
Operating Profit or (Loss)	(2.6)	(1.0)

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

Ownership and Control: Aer Turas is substantially owned and effectively controlled by citizens of Ireland. Prior to 1994, Aer Lingus plc, Ireland's national airline, owned 80% of Aer Turas' stock. On August 26, 1994, Aer Lingus' shares were acquired by Clouna Limited which is wholly owned by P.J. Cousins (90%) and S.J. O'Connell (10%). Messrs. Cousins and O'Connell are citizens of Ireland and officers of Aer Turas.

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

PERMIT TO FOREIGN AIR CARRIER
(as reissued)

Aer Turas Teoranta

A Flag Carrier of Ireland

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code, and the orders, rules, and regulations of the Department of Transportation, to engage in charter foreign air transportation of property and mail as follows:

- A. Between any point or points in Ireland and any point or points in the United States.**
- B. Between any point or points in the United States and any point or points not in the United States or Ireland, provided that such traffic is carried via Ireland and makes a stopover in Ireland for at least two consecutive nights.**

The holder shall be authorized to engage in other charter trips of property in foreign air transportation, subject to the terms, conditions and limitations of the Department's regulations governing charters.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached.

This permit shall be subject to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

This permit shall be effective on **March 5, 1996**. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement

or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Government of Ireland (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of Ireland in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and Ireland. However, clause (4) of this paragraph shall not apply if, prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention, or agreement to which the United States and Ireland become parties.

The Department of Transportation has executed this permit and affixed its seal on the 5th day of March, 1996.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Department's Regulatory Analysis Division, X-57, Office of Aviation Analysis (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

